

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5276 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SHARDULBHAI VASRAMBHAI

KANDORIYA

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

Mr. Nigam Shukla, learned Asst. G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/11/96

ORAL JUDGMENT :

1. This petition has been filed by the brother of the detenu i.e. Arjanbhai Vasrambhai Kandoriya.

2. This Special Civil Application has been filed against the order dated 1-5-96 passed by the Police Commissioner, Surat City whereby the detenu has been detained under the provisions of the Gujarat Prevention

of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 8-5-96 and since then the detenu is under detention lodged at District Jail, Jamnagar.

3. This Special Civil Application was filed on 19-7-96 and on 22-7-96 Rule returnable on 21-8-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

4. The grounds enclosed with the detention order show that against the detenu 3 criminal cases for offences under IPC Chapters 16 and 17 were registered. Besides these, the detaining authority has also taken into consideration the statements made by certain witnesses with regard to the incidents dated 25-2-96, 20-3-96 and 5-4-96. On account of the activities of Gundagiri and other anti social and criminal activities, the petitioner has been found to be a dangerous person and accordingly the detention order has been passed.

5. The detention order has been challenged on more than one grounds, but the learned counsel for the petitioner has stressed that it is not a case of breach of public order and at the most it can be said to be a case of breach of law and order.

6. In view of the law laid down by the Supreme Court in 1995(2) GLR 1268 (M.J. Shaikh v. M.M. Mehta, C.P.) it is clear that the allegations and materials relied upon by the detaining authority against the detenu do not constitute a case of breach of public order and at the most it can be said to be a case of breach of law and order. The detention order, therefore, deserves to be set aside on this ground alone.

7. Accordingly the Special Civil Application is allowed and the impugned detention order dated 1-5-96 passed by the Police Commissioner, Surat City is hereby quashed and set aside and the detenu's detention is declared to be illegal. The respondents are directed to release the detenu and set him at liberty forthwith, if not required in any other case. Rule is made absolute.